IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3323 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE RAVI R. TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHADRIVAN CO.OP HSG SOCIETY LTD
Versus
AMC

Appearance:

MR BS PATEL for Petitioner
MR RR MARSHALL for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 05/12/2000

ORAL JUDGEMENT (Per : MR.JUSTICE B.C.PATEL)

#. One Shri Maheshkumar M. Patel filed the present petition before this court under Article 226 of the Constitution of India in the name of Badrivan Cooperative Housing Society Limited praying for issuance of a writ of prohibition any/or a direction in the nature of prohibition, prohibiting the respondent Corporation from sealing the premises of the petitioner society and evicting the members of the petitioner society from the residential houses (flats), which have been constructed according to the permission granted by the respondent Corporation. The petitioner also prayed that during pendency of the petition, the respondent Corporation be restrained from sealing the premises of the petitioner society and from evicting the members of the petitioner society.

#. The petitioner, on oath, has stated that after obtaining permission, the society wanted to revise the plan. After verifying, the Corporation approved the revised plan vide permission dated 31.1.1997, a copy of which is at Annexure "B" to the petition. In all, as stated by the petitioner on oath, 143 flats were permitted to be constructed. In para 2.4 the petitioner has made the following averments :-

> "The petitioner society appointed the contractor and the contractor started construction and the construction is almost over. The petitioner states that the construction of 143 flats is according to the plan approved by the respondent Corporation and no change has been made in the construction and the same has been supervised by the members personally. The members residing in Tower Nos. 'A', 'B' and 'C' are paying tax to the respondent Corporation. A copy of one of the receipts is appended at Annexure "C" to the petition."

It is further stated that by taking loan they have constructed the flats and if they do not occupy the flats they have to pay rent for the premises occupied by them. It is further stated on oath, as under :-

> "The members of the petitioner society started to reside and suddenly the respondent Corporation ignoring the hard facts that the persons are residing without Building Use permission is

trying to exercise powers under Section 268 of the Act, which has constrained the petitioner society to approach the Honourable Court by filing the present petition."

#. Thus, it is the case of the petitioner that the society got erected the building as per the plan approved by the Municipal Corporation. Thereafter, the members have occupied the flats and as they were apprehending that the Corporation is likely to take action, they approached this Court. The learned Single Judge while admitting the petition made an order as under:-

"Admit.
Issue notice to the respondent returnable within two months. Respondent no. 1 Corporation is restrained from sealing the premises of the petitioner society and evicting its members till further orders subject to the condition that petitioner society will apply for permission u/s 263 of the Bombay Provincial Municipal Corporation Act within two weeks, and if petitioner applied u/s 263 of the Act within the stipulated period, respondent no. 1 would be at liberty to decide the same before the date fixed. D.S. is permitted."

#. Mr. R.R. Marshal, learned advocate appearing for the respondent Corporation stated that a Civil Application No. 4674/99 is filed which may be treated as affidavit-in-reply of the Corporation. On behalf of the respondent Corporation it is pointed out in that Civil Application No. 4674 of 1999 that illegal construction was carried out. The petitioner got constructed 8 additional pent-houses on the top floor and various other types of illegal constructions were carried out. As a result of this a notice under Section 260(1) of the Bombay Provincial Municipal Corporation Act, 1949 ("the Act" for brevity) was issued and subsequently an order under Section 260(2) of the Act was also made. A copy of the order is annexed with the Civil Application. Before the illegal constructions could be demolished, the petitioner approached City Civil Court by filing Civil Suit No. 4635 of 1997. As a result of that, the construction remained as it was. It was further pointed out that without getting Building Use permission, some of the members occupied the flats illegally and to prevent further occupation of the building, the respondent Corporation sealed 35 flats, which were vacant and a Panchnama to that effect was also drawn (indicating that the flats were sealed). Copies of the Panchnamas are

also annexed with the Civil Application. It was also pointed out in the affidavit by the respondent Corporation that the society applied for Building Use permission on 15.7.1998, but the respondent Corporation refused to grant such permission on 28.7.1998. The nature of illegal construction is shown in the map annexed to the Civil Application. The nature of illegal construction carried out as on 24.4.1997 has been indicated and on the basis of this, the respondent Corporation wanted to take action earlier, but could not take action in view of Civil Suit. It is further pointed out that after hearing the petitioner and after issuance of notice under Section 260(1) of the Act, no explanation was placed on record despite the fact that several opportunities were given. In the order, it is also noted that no material whatsoever has been placed to indicate that construction in question was carried out before the Act came into force. It is also mentioned in the order that for additional construction or for covering the portion meant for parking, no intimation was given to the Corporation or no permission whatsoever has been obtained from the Corporation. This order was served on the petitioner and it seems that thereafter, the flats which were not in occupation were sealed in exercise of powers under Sections 268(5) and 483 of the Act. Panchnamas are placed on record indicating sealing of certain flats and pent houses. It appears that 35 flats and 5 pent-houses were sealed.

#. It is required to be noted that the petitioner itself filed an affidavit before Ahmedabad Municipal Corporation, a xerox copy of which is produced on record at page 18 of the Civil Application (the original was placed for perusal) interalia, stating that the security guards be withdrawn and in view of the undertaking, given to follow the rules, seals which are affixed on the property in question be removed. The Secretary of the petitioner Society, who is before us has admitted that he has sworn the affidavit on 18.7.1998. Thus, it is very clear that the seals were affixed on certain flats for which application was given to the Corporation for removal of seals. Not only that but on 15.6.1998, 28 persons addressed a letter to the Commissioner, interalia, requesting that they are the members of Badrivan Cooperative Housing Society Ltd.; Plans have been sanctioned by the Corporation, As some work was not completed, Building Use permission was not taken. Therefore, the flats were sealed on 17.3.1998. It is specifically stated in the letter that they have got their children admitted in schools. The letter is dated 15.6.1998 written after the vacation was over in the

schools. It is further stated that they are not able to go to their flats for residing. Thus, on 15.6.1998 an application was made requesting the Corporation that seals may be removed. In that application, applicants have shown their willingness to execute bond and they have stated that they shall abide by the results of the proceedings initiated under the Rules and Regulations. Thus, the members of the petitioner society were aware that the premises have been sealed. The petitioner was not able to controvert this aspect by placing any documentary evidence. The petitioner did not place any documentary evidence to show that seals were removed by the Corporation and thereafter, flats were occupied. Some persons who have filed their affidavits stating that they are occupying the flats are also party to the aforesaid letter written to the Corporation on 15.6.1998. However, there is no whisper in these affidavits about this letter or that their flats were sealed on 17.3.1998. It is not their case that subsequently seals were removed by the Corporation. They have kept mum about the seals affixed on flats. No reliance can be placed on their affidavits.

#. Mr. Marshal, learned advocate submitted that the petitioner has approached the Court by suppressing material facts, that is to say that the flats were sealed as they were not in occupation. He submitted that seals were affixed on 17.3.1998. Thereafter, a letter was addressed on 15.6.1998 by the members of the society as stated hereinabove and an affidavit was also filed on 18.7.1998 from which it is clear that the flats were sealed and that the seals have not been removed by the Corporation. He submitted that by suppressing the material fact that the flats are sealed, the petitioner approached this Court, interalia, stating that the construction carried out is in accordance with the rules and regulations, which in fact is not true as indicated and discussed hereinabove. The construction was not carried out in accordance with the plans approved.

#. When a public officer, in exercise of the powers conferred upon him, has taken an action, then it is not open for any one to set it at naught in a manner which is not permissible. If an action is taken and the person is aggrieved, it is open for him to approach the court of law by pointing out all necessary and true facts. The petitioner has even suppressed the fact that a Civil Suit No. 4635 of 1995 was pending in City Civil Court, notice was issued under Section 260 of the Act; thereafter hearing was given and after hearing, an order was made, which was served on the petitioner. It is thereafter

that the seals were affixed in accordance with law. All these facts have been suppressed only with a view to obtain favourable orders.

#. When the petitioner approaches the Court under Article 226 of the Constitution of India, it is his duty to come with clean hands and to narrate true and correct facts before the Court. If the facts are suppressed or false averments are made, the petitioner is not entitled to get any relief. In the instant case by suppressing material facts and by not disclosing true facts and by making false averments that construction is made as per the approved plan and that they are residing in the flats, the petitioner misguided the Court. The petitioner also made a wild statement in the petition that more than 50% residential houses are used by the people in city without Building Use permission. No corroborative evidence from reliable source is produced. It is required to be noted that the prayer was that the Corporation be restrained from sealing the premises and from evicting the members occupying the flats. The Court made that order with a further condition that the petitioner society will apply for permission under Section 262 of the Act within two weeks and if it applies accordingly, it will be open for the Corporation to decide the same before the date fixed. It is also required to be noted that before the Court it was not disclosed that earlier an application was made for Building Use permission, which was rejected by the Corporation on 28.7.1998. If material facts were disclosed, we are sure that the Court would not have passed the order impugned. Mr. Patel, learned advocate stated that subsequently, an application has been made. However, there is nothing on record that Building Use Permission has been granted by the Corporation.

#. As indicated hereinabove, the petitioner has approached the Court by making false averments and suppressing material facts from the Court. The petitioner is, therefore, not entitled to any relief. Thus, this petition must be dismissed. It is directed that the petitioner shall put the clock back in position ante as on the date of filing of the petition, within the period of one week. If it fails to do so within the said period of one week, the respondent Corporation shall take action to restore the position back as it was before passing the order.

##. Mr. Patel, learned advocate stated before us that in view of the affidavit filed by the petitioner earlier before the Corporation and the application

forwarded by the persons to whom flats were allotted, the Secretary of the petitioner Society was interrogated by him outside the Court room, where he frankly stated that he has filed the earlier affidavit and that the seals were there on the premises in question. However, at the behest of the builder this petition was filed by him and he sworn the petition on oath making statement on oath contrary to what was stated in earlier affidavit before Corporation. He has further stated that he is not residing at the place in question. He is residing far away at Drive-in Road. He further stated that he has not seen the flats at the time of filing the petition. He does not know as to whether the flats were occupied or not; or whether they were sealed or not. He stated that at the behest of the builder, namely, Shri G.K.Patel, who is residing in Parameshwar Apartment, Behind Civil Hospital, Ahmedabad, he has filed this petition. He further stated that he will keep the said builder present before the Court on 7/12/2000. From the aforesaid discussion, it is clear that the petitioner has approached the Court by making false averments in the petition and suppressing material facts.

##. This petition is dismissed with cost quantified at Rs. 50,000/- (Rupees fifty thousand only), which is apportioned as under :-

Rs. 40,000/- (Rs. Forty thousand only) would go to the state exchequer and RS. 10,000/- (Rs. Ten thousand only) to Ahmedabad Municipal Corporation. The amount of cost shall be deposited by the petitioner within a period of two weeks. Interim relief stands vacated.

##. The office is directed to place the matter before the Court on 7/12/2000 for further orders.

(B. C. Patel, J.)

5th December, 2000 (Ravi R. Tripathi,J.)

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